

The Department will not approve the accuracy of private legal publications. See, 86 Ill. Adm. Code 140.101. (This is a GIL.)

February 1, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 29, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The enclosed Report and Tax Bulletins have been reviewed editorially and are scheduled to be mailed to corporations represented by us in the State. In order to be sure they reflect as accurately as possible the current policies of the administering officials, it has been our practice to submit the Bulletins in advance of the actual mailings for their approval.

Any comments or suggestions you may wish to make will be given full consideration and any changes requested by you which apply to general business corporations will be adopted, subject of course to space limitations in our Bulletins.

Your cooperation will be much appreciated.

The Department will not approve the accuracy of private legal publications. However, we do have some suggestions regarding the draft attached to your letter.

In the Retailers' Occupation Tax and Use Tax section, the draft language references the threshold for mandatory payment through the use of electronic funds transfer (EFT) as being an average monthly amount of \$200,000. On and after October 1, 2000, the threshold for mandatory payment by EFT is set at an annual tax liability of \$200,000 or more.

The Department has amended its EFT rules, effective February 28, 2000, to allow service groups or other taxpayer agents to submit authorization agreements (EFT-1s) on behalf of taxpayers if the service groups or other taxpayer agents retain valid Powers of Attorney for Electronic Processing (Form IL-2848-E) for each of those taxpayers in their books and records. See 86 Ill. Adm. Code 750.400.

Your draft language also changes a reference regarding sending the remittance of tax to the Department with a return to "with a report." The document being referenced is the ST-1 Sales and Use Tax Return. Referencing the ST-1 Form as a report is misleading since there penalties for failing to file returns on time that are not applied to the failure to file other types of documents on time. See 35 ILCS 735/3-4.

The paragraph regarding local taxes should be changed to reflect the removal of the population limitation for non-home rule municipalities to enact municipal retailers' occupation, service, and use taxes. See Public Act 91-649, effective January 1, 2000. You may also want to mention that the Department provides a list of the local sales tax rates on its website at www.revenue.state.il.us.

In the draft language regarding Service Occupation Tax and Service Use Taxes, you are changing a reference from tangible personal property "transferred" as an incident to the "sale" of service to tangible personal property sold as an incident to the performance of service. Please note that the original language regarding the transfer of tangible personal property as an incident to the sale of service is statutory language and any change may mislead the reader regarding what is already a very confusing area of Illinois tax law. The provisions regarding electronic funds transfer in these sections also need to be changed to reference the \$200,000 annual mandatory threshold as described earlier in this letter for the sales and use tax sections. Numerous other technical inaccuracies exist. For example, not all servicemen are required to register as indicated in your "Registration" section (e.g., those servicemen electing to pay Use Tax on their cost price are not required to register). In addition, your "Rate of Tax" Section does not explain the tax applicable to unregistered de minimis servicemen opting for method (4) under "Remarks". The Department has recently proposed regulations more fully explaining the liabilities of servicemen. We regret that we do not currently have resources to make the numerous corrections to your draft. However, we would suggest that you advise your readers of our proposed regulations, which appear on our website. Once these regulations are adopted, they will also appear on our website.

You have also proposed to remove any references to the Quill decision in the Use Tax section and the Service Use Tax section. Please note that we recommend that this language remain. See for example the language in the Service Use Tax section regarding service contractors or providers maintaining a place of business in this State. All of the provisions regarding activities in this State were adopted before the Quill decision and must be looked at in the context of the Supreme Court's ruling in the Quill case.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.